DEFENSE LOGISTICS AGENCY

ALTERNATIVE DISPUTE RESOLUTION (ADR) AND MEDIATION

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What Is ADR?

Definition: Any procedure agreed to by the parties to resolve disputes using a *third party neutral*

Types: Mediation, facilitation, arbitration, conciliation, fact-finding, use of ombuds, early neutral evaluation, mini-trials, or any combination

Why Do ADR?

It saves money: saves time, money, resources

It makes sense: helps focus on both parties' interests;

builds better relationships

It advances DLA strategic goals:

- #1: Supporting Our Customers
- #2: The Revolution in Business Affairs
- #3: Enabling Our Workforce
- #5: Partnering with Industry

Why Do ADR? (continued)

It's DCMC Policy

- DCMC Commander letter, "Use of Alternative Dispute Resolution to Resolve Contract Disputes" (April 5, 1996)

- DCMC One Book, Chapter 4.2.4, "Disputes and Appeals," Section 3.

  "ADR shall be considered and, if appropriate, attempted even before issuing a final decision."

Why Do ADR? (continued)

It's DLA policy

- DLAD 5145.1: Encourages the expanded use of ADR. If unassisted negotiations do not resolve an "issue in controversy," ADR *must* be considered and a management decision not to use ADR *must* be explained *in writing* by an official at least one level above the deciding official, after consultation with counsel.

Why Do ADR? (continued)

It's Administration policy

- Presidential Memorandum: Committee to Facilitate and Encourage ADR, May 1, 1998
- DOJ Policy Statement on the Use of ADR, 61 Fed. Reg. 4729 (1996)
- DOD Directive 5145.5 (April 22, 1996)

Why Do ADR? (continued)

It's the law

- Administrative Dispute Resolution Act (ADRA) of 1996 (amending 1990 law), Pub.L. 104-320. Agencies must have an ADR specialist; for DLA it is the General Counsel. PLFA legal offices all have ADR specialists.
- Executive Order 12988 (2/9/96), Civil Justice Reform, to reduce Government litigation; use informal dispute resolution/ADR.

FAR Requirements

Protests: FAR 33.103 (c)

Disputes: FAR 33.201, 33,204, 33.210, 33.214,

- Agencies encouraged to use ADR
- Contracting officers are authorized to use ADR
- Contracting officer who refuses contractor request for ADR must inform contractor, in writing, of reasons
- Contractor who refuses Government request for ADR must inform contracting officer in writing, of reasons (see also 33.214(b))

The ADR "Mindset"

ADR is always a "win." "Winning" means getting what you want. ADR helps focus on *what both parties want*. ADR is also valuable even if parties can't resolve disagreement (focus/narrow issues; improve relationships).

ADR is "interest based." Traditional dispute resolution is on the *position* or the *issue*. ADR is about *interests*. Is it in our interest to keep insisting we are legally right (even if we are) if we alienate contractors/employees and spend lots of money answering letters, complaints to OSD/Congress/ the Director?

What is Mediation?

Definition: Mediation is a process where parties meet with a third party neutral (the mediator) in a nonadversarial setting to seek resolution of the dispute. The mediator helps the parties craft their own solutions to the problem. If successful, mediation results in a written agreement resolving the dispute.

Preference for Mediation: DLAD 5145.1 gives special emphasis to mediation in selecting ADR, because of its particular benefits.

Mediation Benefits

- Parties typically save money, resources, time
- Parties retain control of the result
- Parties have more options than in other forums
- Parties can preserve business relationships/reduce likelihood of further disputes
- Parties can address the real issues in dispute
- Parties work directly with each other
- Parties may avoid unfavorable judicial/administrative precedent
- Mediation has good success rates; even if unsuccessful, parties retain existing rights.

RESOLVE

- Reach Equitable Solutions Voluntarily and Easily
- DLA EEO Mediation Program
- Joint GC/CAAH Project
- Resolution of complaints at informal stage
- In-house mediators
- Voluntary participation by employees

You Can Resolve Disputes without Third Party, But...

Trust Problems: party sees DLA as the "opponent;" does not believe DLA position ("reactive devaluation")

Reality Testing: mediator/neutral can evaluate the case; temper unrealistic positions.

Problem-Solving: neutral can help explore options that the parties could not identify themselves.

Builds partnerships: provides a forum for better listening and problem-solving; shows DLA cares enough to give a hearing with a third party.

Your Role: How to Make ADR "Happen"

- Be sure your personnel are trained in ADR/Mediation (contact your legal office)
- Be sure your personnel consider ADR, early on, in working issues
- Every dispute presents an ADR opportunity, especially:

--personnel disputes
--termination disputes
--REAs
--quality issues
--cost reasonableness issues
--other